

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

GEORGE SEPULVEDA,
Plaintiff

v.

UNITED STATES OF AMERICA,
Defendant

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CIVIL NO. 1:14-CV-0749
(Judge Rambo)
(Magistrate Judge Carlson)

MEMORANDUM

Before the court is an October 2, 2014, report and recommendation of the magistrate judge (Doc. 13) to whom this matter was referred in which he recommends that Defendant's motion to dismiss be denied. Defendant, United States of America, has filed objections to the report and recommendation to which no response has been filed. The matter is ripe for disposition. For the reasons set forth below, the report and recommendation will be rejected and Defendant's motion to dismiss will be granted.

I. Background

Plaintiff, George Sepulveda, is a federal prisoner who filed this law suit against the United States pursuant to the Federal Tort Claims Act, 28 U.S.C. § 2675, *et seq.* on April 18, 2014. This is the second complaint on the same issue that Plaintiff has filed. His first complaint was filed less than six months after submitting his administrative tort claim to the appropriate agency. This rendered the first complaint as premature. (*See* 28 U.S.C. § 2675(a).) The Bureau of Prisons denied the administrative tort claim. The denial letter advised Plaintiff that he had six months from the date of denial to file his claim in federal court. Plaintiff filed this second law suit on April 18, 2014, eleven months after he denial of the administrative agency.

II. Discussion

The magistrate judge opined that Plaintiff is entitled to equitable tolling of the statute of limitations because Plaintiff timely asserted his rights in the filing of the first complaint but “mistakenly in the wrong forum.” (Doc. 13, p. 14.) Defendant argues that (1) the first and second complaints were filed in the proper forum, i.e., the United States District Court for the Middle District of Pennsylvania; (2) the first complaint was filed prematurely (28 U.S.C. § 2675(a)); and (3) the second complaint was not timely filed (28 U.S.C. § 2401(b)).

III. Conclusion

This court agrees that Plaintiff is barred from proceeding and that equitable tolling does not apply. This court adopts the arguments and reasoning set forth in Defendant’s brief in support of its objections to the report and recommendation (Doc. 15). The court will, therefore, reject the report and recommendation and grant Defendant’s motion to dismiss for lack of subject matter jurisdiction. An appropriate order will be issued.

s/Sylvia H. Rambo
United States District Judge

Dated: November 18, 2014.